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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,709	07/02/2003	Jackson Streeter	ACULSR.020A	3744
20995	7590	08/03/2005		
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			EXAMINER JOHNSON III, HENRY M	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 08/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/612,709

Applicant(s)

STREETER, JACKSON

Examiner

Henry M. Johnson, III

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Specification*

The attempt to incorporate subject matter into this application by reference to references within a document incorporated by reference is improper.

### *Claim Rejections - 35 USC § 101*

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-20 are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a *specific, substantial and credible* asserted utility or a well established utility.

An invention must produce a concrete, tangible and useful result. The method claims cite no specific, substantiatable benefit. The benefits of "reducing, preventing or inhibiting" are interpreted as too sweeping in context to yield any specific result. Disclosure of only a general utility rather than a particular utility is insufficient to meet statutory requirement. When it is speculative as to whether the invention achieves the asserted utility, then the invention lacks a specific utility. See Rey-Bellet v. Englehardt, 493 F.2d 1380, 1383-84, 181 USPQ 453, 454-56 (CCPA 1974). A substantial utility requires a "real world" use. Utilities that require carrying out further research to identify or reasonably confirm such use are not substantial utilities. The disclosure provides no details to substantiate the utility, thus suggesting additional research is required. The credibility is assessed from the perspective of one of ordinary skill in the art in view of the disclosure and any other evidence of record. No substantiated test or trial results are cited. The ranges of the variables disclosed regarding the radiation are wide, making it speculative as to whether the invention achieves the asserted utility, thus credibility is lacking.

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The power density is disclosed as from .01 to 500 mW/cm<sup>2</sup>, the wavelength from 630 to 904 nanometers and the treatment time from one second to two hours. Another consideration is whether the invention produces a concrete result. The sweeping range of variables raises the question of an ability to produce the same result on a consistent basis. No evidence is provided that the results can be assured.

Claims 1-20 are also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a *specific, substantial and credible* asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to perform the process. The wide ranges provided for the parameters of the treatment would require excessive experimentation for one skilled in the art to perform the method.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "biostimulatory effects" is indefinite as it is not defined within the specification in a manner to determine specific met and bounds for the claim. "Enhancing basic cell functions" may be widely interpreted as resulting from any form of electromagnetic radiation.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 5, 7-12, 15 and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Application Publication US 2001/0033595 to Miyake. Miyake teaches a method provide a variety of output laser wavelengths suitable for treating diseases of the eye (abstract). The method includes a laser with a wavelength of from 630 to 810 nanometers (paragraph 0020) and power greater than .01mW/cm<sup>2</sup> (paragraph 0047). The laser may be pulsed or continuous (paragraph 0006).

Claims 1-8 and 10-18 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication US 2004/0122491 to Strong. Strong teaches methods for using a laser in the treatment of age related macular degeneration (paragraph 0005) with wavelengths from 400 to 900 nanometers (paragraph 0060). Power densities from 50 to 550 mW/cm<sup>2</sup> are disclosed (paragraph 0068).

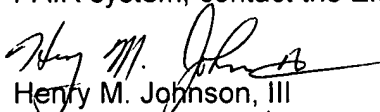
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M. Johnson, III whose telephone number is (571) 272-4768. The examiner can normally be reached on Monday through Friday from 6:00 AM to 3:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Henry M. Johnson, III  
Primary Examiner  
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